In the High Court of Uttaranchal, at

Nainital.

A.O. No. 743/2001

(Old No. 708/1998)

National Insurance Company Ltd.
Through its Administrative Officer,
Divisional Office, Civil Lines,
Allahabad .....Appellant.

Vs.

1- Smt. Kanti Devi Widow of Late Chandra Ballabh Burlakothi.

2- Leeladhar Burlakothi (minor) S/o deceased.

3- Puran Chandra Burlakoti (minor) S/o deceased.

4- Devendra Kumar Burlakoti (mionr)
S/o of deceased

5- Kiran Chandra Burlakoti (minor)
S/o deceased.
All R/o Gram Pangoot (Burlakot)
Post Pangoot, Patti Parli,
Tehsil and District Nainital .....Respondents.

Sri Lalit Belwal, Advocate for the appellant.
Sri G.B. Pande, Sri R.P. Nautiyal, learned counsel
For the respondents.

Hon'ble B.C. Kandpal, J.

This appeal, U/S 173 Motor Vehicles Act, 1988, has been preferred against the judgment and award dated 31-3-1988, passed by the M.A.C.T./Addl. District Judge, Nainital, in M.A.C. No. 387 of 1993, awarding Rs. 1,60,000/- as compensation along with 6% interest per annum from the date of petition to the date of the impugned award and thereafter @ 9% per annum from the date of the order till the date of payment. The National Insurance Company, insurer of the offending bus, was directed to pay the compensation.

2- Brief facts of the case are that Chandra Ballabh Budhalakoti aged 46 years along with Devendra Singh and Bhagat Singh started their journey from Village Saur Vinayak on 8-5-1993 in bus No. U.P. 02/5870 for Kotabagh. They were the members of a marriage party of Rajendra Singh Bisht. When the bus reached near Durao Pahar the driver of the vehicle drove it rashly and negligently and in a violent speed due to which he could not control the vehicle and it went into a khud, about 300 meters deep. In the offending bus 51 passengers were travelling, out of which 17 persons, including Chandra Ballabh Budhlakoti died at the spot and 33 persons sustained injuries in the accident. The driver of the vehicle had escaped from the spot. The claimants filed claim petition for 15,00,000/- as compensation in respect of death of Chandra Ballabh Budhlakoti. They alleged that the deceased was earning Rs. 3000/- per month.

3- The owner/O.P. of the offending bus filed WS before the Tribunal and alleged that the accident had occurred due to sudden mechanical defect in the vehicle and denied the negligent of the driver. However, he pleaded that in case if the liability of compensation is proved, the same shall be against the insurance Company.

4- The National Insurance Company also filed its W.S. and pleaded that at the time of accident the bus was being driven with passengers much beyond the seat of 29 in all for which it was approved, hence it is not liable to pay any compensation.

5- The Claim Tribunal consolidated all the claim petitions filed before it relating to the same accident

and framed following issues on the basis of pleadings of parties:

1- Whether the accident in question was caused due to the rash and negligent driving of bus No. U.P. 02/5870 by the driver thereof?

2- To what amount of compensation, if any, the claimant are entitled and from which of the respondents.

6- Thereafter parties led evidence in support of their claim.

7- The learned Tribunal on perusing the evidence on record and hearing learned counsel for the parties awarded Rs. 1,60,000/- as compensation to the claimants of the present petition along with 6% interest per annum from the date of petition to the date of the impugned award and thereafter @ 9% per annum from the date of the order till the date of payment. The National Insurance Company, insurer of the offending bus, was directed to pay the compensation.

8- Feeling aggrieved the National Insurance Company has field this appeal before the Allahabad High Court, which was transferred to this court on creation of new State.

9- Heard learned counsel for the parties and perused the record.

10- The main question raised in appeal is that the offending vehicle had the capacity of 29 passengers including the driver and cleaner, but 51 passengers were traveling in the vehicle at the time of accident

and therefore it was violation of condition of insurance policy and the appellant/insurer is not liable to pay any compensation as provided U/S 149 (2)(a)(c) of the M.V.Act.

11- Learned counsel for the parties have filed certified copy of judgment rendered by the Division Bench of this Court in A.O. No. 1052/2001 National Insurance Company Ltd. Vs. Smt. Hansi Bisht and others, The Division Bench of this Court vide judgment dated 22-7-2004 has held that the insurer has neither pressed the Tribunal for faming the issue regarding breach of policy nor adduced any evidence in this connection and the liability of the insurer towards the third party does not get avoided. It was also held that the bus was comprehensively insured with the appellant for third party insurance and the appellant was bound to pay compensation to the passengers traveling by the bus. According the appeal of the insurer was dismissed with costs.

12- From perusal of the above judgment of the Division Bench of this Court, it become obvious that the appeal was filed against the same judgment of the Tribunal and the controversy raised in the instant appeal is squarely covered by the above judgment, hence in view of the above decision of the Division Bench of this Court, the appeal is liable to be dismissed being devoid of any force.

13- The appeal is hereby dismissed with costs. The impugned judgment and award is hereby confirmed.

(B.C. Kandpal, J.)

Dated: September 12, 2006
Aswal.